

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ELAINE CHAO, SECRETARY OF
LABOR, UNITED STATES
DEPARTMENT OF LABOR,

Plaintiff,

v.

MODERN CONTINENTAL
CONSTRUCTION COMPANY,

Defendant.

Civ. No.: 04 11982 RCL

JOINT STATEMENT PURSUANT TO LOCAL RULE 16.1(D)
AND COURT ORDER

The parties submit this Joint Statement pursuant to Local Rule 16.1 of the United States District Court for the District of Massachusetts and the Court's Notice of Scheduling Conference, the parties states as follows:

A. Precise Summary of Positions

1. Plaintiff

The Plaintiff avers that the Defendant violated §11(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, *et seq*, by discharging employee Augustus Thorndike on February 11, 2003 because he had complained about a safety hazard and asked for time to correct it. The Plaintiff seeks, for Thorndike, back wages, damages, reinstatement to his job, and all other appropriate relief. The Plaintiff also seeks an injunction against future violations.

2. Defendant

Defendant denies that Mr. Thorndike was terminated as a result of a safety complaint.

Defendant argues that Plaintiff cannot establish that a safety complaint was made or that there was a causal connection between Thorndike's termination and any alleged safety complaint.

Defendant also disputes Plaintiff's assessment of the alleged lost wages asserted as Thorndike would have been laid off as a matter of course at some point between February, 2002 and the present.

B. Proposed Pre-Trial Schedule and Discovery Plan

March 1, 2005	Pleadings amended
June 15, 2005	Mediation (if applicable)
June 30, 2005	Case Management Conference (if ordered by Court)
September 1, 2005	Deadline for completion of all fact discovery, including request for production of documents, interrogatories and fact witness depositions
November 1, 2005	Deadline for filing dispositive motions (either party determines if such a motion is appropriate)
January 15, 2006	Final Pre-Trial Conference
February 15, 2006	Trial Ready Date

C. Settlement

Defendant has received a written settlement demand from Plaintiff's counsel in accordance with Local Rule 16.1.

D. Certification Pursuant to Local Rule 16.1(D)(3)

The parties affirm that they have conferred with their clients with a view to establishing a budget for the costs of conducting the full course and various alternative courses of the litigation, and to consider the resolution of this action through alternative dispute procedures, such as those outlined in Local Rule 16.4. Alternative dispute resolution is not appropriate at this time.

The Plaintiff advises that this is an enforcement action under the Occupational Safety and Health Act of 1970, that litigation costs are borne by the Office of the Solicitor, United States Department of Labor, and that the Regional Solicitor is aware of the costs of litigating this matter.

Certification of Defendant required by Local Rule 16.1(D)(3) shall be filed separately.

E. Trial Before Magistrate Judge

The parties do not consent at this time to a trial before a magistrate judge.

Respectfully submitted,

ELAINE CHAO, SECRETARY OF
LABOR, UNITED STATES DEPARTMENT
OF LABOR

By his attorney,

/s/ David L. Baskin (STP)

Frank McDermott, Jr.
David L. Baskin BBO #033010
U.S. Department of Labor
Office of the Solicitor
JFK Federal Building, Room E-375
Boston, MA 02203

MODERN CONTINENTAL
CONSTRUCTION CO., INC.

By its attorneys,

/s/ Stephen T. Paterniti

Stephen T. Paterniti, BBO #564860
Robert H. Morsilli BBO #629999
Jackson Lewis LLP
75 Park Plaza
Boston, MA 02116
(617) 367-0025

Dated: December 28, 2004